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19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA

21 BUD MINTON,

CASE NO. C08-01941 CW

22 Plaintiff,

23 vs.

**JOINT CASE MANAGEMENT  
STATEMENT AND PROPOSED ORDER**

24 DELOITTE AND TOUCHE USA LLP PLAN,

Judge Claudia Wilken

25 Defendant,

Complaint Filed: April 11, 2008

26 METROPOLITAN LIFE INSURANCE  
27 COMPANY,

Case Management Conference Date:  
July 22, 2008

28 Real Party in Interest.

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1 Plaintiff Bud F. Minton, Defendant Deloitte and Touche USA LLP Plan  
2 and Real Party in Interest Metropolitan Life Insurance Company, present the following case  
3 management statement for the case management conference scheduled on July 22, 2008.

4 **1. Jurisdiction and Service:**

5 The court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, because  
6 relief is sought under an employee welfare benefit plan governed by the Employee Retirement  
7 Income Security Act of 1974 (ERISA), U.S.C. § 1001, *et seq.*, thereby presenting a federal question.  
8 All parties were served and have appeared.

9 **2. Facts:**

10 **Plaintiff's Statement of the Facts:**

11 Mr. Minton, a computer graphics designer with Deloitte and Touche USA LLP, suffers from  
12 longstanding fibromyalgia, repetitive stress syndromes, and depression that is secondary to his pain,  
13 which had been intermittently disabling for many years, and became permanently disabling on  
14 August 25, 2006. Mr. Minton's unfortunate condition is attributed to prolonged hours of computer  
15 use during his employment. Under the Deloitte and Touche USA LLP Plan ("plan"), employees are  
16 provided with long-term disability benefits. This plan is administered and insured by Metropolitan  
17 Life Insurance Company ("MetLife"). While covered under the plan, on December 20, 2006, Mr.  
18 Minton applied for disability benefits under the plan and was denied by MetLife. His subsequent  
19 appeals resulted in denials, thereby exhausting his administrative remedies. Despite a detailed report  
20 from his long-time treating osteopathic physician, Dickie Hill, D.O., that Mr. Minton was disabled  
21 from working in any occupation related to a graphics designer position, MetLife chose to rely on  
22 their own "independent" examiners in denying Mr. Minton's claim. Mr. Minton brought this action  
23 to recover his long-term disability benefits.

1           **Defendant's Statement of the Facts:**

2           Plaintiff was an employee of Deloitte & Touche USA, LLP and a participant in the Deloitte  
3 & Touche Long Term Disability Insurance Plan (the "Plan"). Real party in interest Metropolitan  
4 Life Insurance Company ("MetLife") is the funding source and the claim fiduciary for the Plan.  
5 (Deloitte & Touche and MetLife are herein referenced collectively as "Defendant.")

6           Plaintiff reportedly began suffering from soft tissue pain in his arms, upper back and neck in  
7 2001. He underwent physical therapy and continued working for Deloitte as a graphics supervisor,  
8 apparently without incident, for several years. Plaintiff asserts that on August 23, 2006, his employer  
9 offered him a choice between taking a severance package or taking a position as a graphic  
10 coordinator in the Document Graphic Service department. The alternative position involved tasks  
11 such as word processing, printing and binding documents. It required five to six hours each day of  
12 sitting, light grasping with the dominant hand, and fine finger dexterity. Mr. Minton claimed that  
13 pain would prevent him from performing these duties and that any attempt to do so would exacerbate  
14 his condition. He stopped working as of August 24, 2006.

15           On December 20, 2006, Plaintiff submitted a claim for long-term disability ("LTD") benefits.  
16 He indicated on his Employee Statement in support of his claim that pain in his arms and upper back  
17 prevented him from working at a computer. After reviewing the medical documentation that  
18 Plaintiff submitted in support of his claim, MetLife informed him on February 9, 2007, that his claim  
19 was denied. Plaintiff asked that the decision be delayed so he could request additional medical  
20 records from his treating physician, Dickie Hill, D.O., and MetLife agreed. The only supplemental  
21 record provided by Dr. Hill, however, was an office note dated February 13, 2007. According to  
22 that note, antidepressants were elevating Mr. Minton's mood, and osteopathic manipulation  
23 treatments were improving his physical functioning. Despite this improvement, Dr. Hill conclusorily  
24 opined that Plaintiff could not work until May 2007.

25           MetLife forwarded the complete medical records, including the February 13 progress note, to  
26 Dr. Frank Nisenfeld, a Board Certified orthopedic surgeon who is an independent physician

1 consultant ("IPC"), for review. Dr. Nisenfeld reviewed the file and opined that the record did not  
2 establish that Plaintiff was so impaired as to be unable to perform his job duties. In particular, the  
3 file contained no record of any diagnostic testing or objective findings of impairment.

4 MetLife credited Dr. Nisenfeld's opinion and notified Plaintiff by letter on March 12, 2007  
5 that his claim was denied because the medical documentation did not establish that Plaintiff was  
6 disabled under the terms of the Plan. Plaintiff also was notified of his right to appeal, and the  
7 deadline for doing so. The 180-day deadline for appealing the denial of benefits expired on  
8 September 10, 2007, and Plaintiff thereafter notified MetLife of his intent to appeal, on September  
9 27, 2007.

10 Despite Plaintiff's failure to comply with the deadline applicable to appeals, MetLife  
11 accepted and considered the appeal. MetLife conducted a full and fair review of Plaintiff's claim on  
12 appeal. As part of that review, MetLife submitted the file to two additional IPCs: a rheumatologist  
13 and a psychiatrist. Dr. Dayton Dennis Payne, Board Certified in internal medicine and  
14 rheumatology, reviewed the file and also conferred directly with Dr. Hill about Plaintiff's condition.  
15 In a report dated January 2, 2008, Dr. Payne pointed out that Dr. Hill had conducted an "extensive"  
16 workup, which yielded uniformly negative findings. Dr. Payne found no medical record evidence  
17 that would support any restrictions or limitations on Plaintiff's activities.

18 Likewise, Dr. Marcus Goldman, Board Certified in psychiatry, opined that the medical  
19 documentation did not support a finding that Plaintiff was disabled due to a psychiatric condition.  
20 That is, the records did not contain any objective findings, mental status examinations, mental health  
21 notes, or any other data that would support a finding of a significant psychopathology such as to  
22 impair Plaintiff's ability to perform his occupation.

23 In addition to obtaining the IPCs' reports, MetLife also accepted additional medical records  
24 from Plaintiff, which was provided after the IPCs had issued their reports. Both IPCs then reviewed  
25 the supplemental records, but neither doctor changed his conclusion that Plaintiff was not  
26 functionally impaired from performing his occupation. Again, both doctors concluded that the



1 records did not support that Plaintiff's condition rendered him unable to perform his occupation. By  
 2 letter dated February 4, 2009, MetLife informed Plaintiff that the denial of benefits had been upheld  
 3 on appeal. This suit followed.

4 **Factual Issues in Dispute:**

5 **Plaintiff's statement:**

6 Whether plaintiff satisfied the plan's definition of disability as of the date of denial of the  
 7 claim for benefits.

8 **Defendant's statement:**

9 The relevant factual determination is whether the administrative record before MetLife at the  
 10 time it adjudicated Plaintiff's claim reasonably supported MetLife's decision to deny the claim, or  
 11 whether the denial was an abuse of discretion.

12 **3. Legal Issues:**

13 **Plaintiff's statement:**

14 Whether the standard of review to be conducted by the Court is an "abuse of discretion" or  
 15 "de novo." In the event that it is determined that the standard of review is for abuse of discretion,  
 16 rather than de novo, plaintiff contends that the failure of defendants to act appropriately will affect  
 17 the existence of and amount of deference granted to defendants. *See Metropolitan Life Insurance*  
 18 *Co. v. Glenn*, 128 S. Ct. 2343 (2008).

19 Plaintiff alleges that the he was not provided a full and fair review as required under *Abatie v.*  
 20 *Alta Health and Life Ins. Co.*, 458 F. 3d 955 (2006), and was not provided a clear and coherent  
 21 explanation of what was missing from the proof of claim as required by *Saffon v. Wells Fargo & Co.*  
 22 *Long Term Disability Plan*, 522 F.3d 863 (2007), and related cases.

23 These issues can be addressed concurrently with hearing on the merits.

24 **Defendant's statement:**

25 Because Plaintiff's claims arise under an ERISA-governed welfare benefits plan, the  
 26 pertinent legal issue is whether Plaintiff is entitled to benefits under the terms of the Plan. To the

1 extent that a dispute arises as to the standard of review that the Court should use in adjudicating  
2 Plaintiff's claim, Defendant contends that the proper standard of review is an abuse of discretion  
3 standard, applying the analysis set forth in *Metropolitan Life Insurance Co. v. Glenn*, 128 S. Ct. 2343  
4 (2008) and *Abatie v. Alta Health and Life Ins. Co.*, 458 F.3d 955 (9th Cir. 2006), including *Abatie's*  
5 adherence to the general Ninth Circuit rule that evidence outside the administrative record may not  
6 be considered in deciding the merits of Plaintiff's claim. A structural conflict of interest (where, as  
7 here, the claim fiduciary is also the funding source for the Plan) does not lead to a less deferential  
8 standard of review; the conflict is merely one additional factor to be considered in determining  
9 whether the Defendant abused its discretion. *Metropolitan Life Insurance Co. v. Glenn*, 128 S. Ct.  
10 2343 (2008).

11 **4. Motions:**

12 There are no prior or pending motions. Plaintiff anticipates filing a summary judgment  
13 motion once the Administrative record has been received, supplemented (if necessary), and  
14 discovery is complete. Plaintiff reserves his right to file other appropriate motions.

15 Defendant expects to file a dispositive motion.

16 **5. Amendment of Pleadings:**

17 The parties do not expect to amend the pleadings at this time.

18 **6. Evidence Preservation:**

19 The parties have discussed and agreed to a litigation hold on any evidence relevant to this  
20 case. Electronic evidence is not to be destroyed. Plaintiff has stored all documents relating to the  
21 initial disclosures electronically, and has mailed a computer CD containing those documents to  
22 Defendants.

23 **7. Disclosures:**

24 Plaintiff mailed his initial disclosures to Defendant on July 14, 2008. Defendants' counsel  
25 has stated to Plaintiff's counsel that they will produce the Administrative Record on July 15, 2008,  
26 as part of their initial disclosures. In the event that plaintiff deems the record incomplete, he will

1 notify defendants' counsel, and request that the record be supplemented.

2 Defendant contends that Rule 26(a)(1)(E)(i) of the Federal Rules of Civil Procedure  
3 explicitly exempts actions for review on an administrative record from initial disclosures. However,  
4 in order to avoid delay and expense, and without waiving the applicability of Fed. R. Civ. P.  
5 26(a)(1)(E)(i) to the instant case, Defendant will make its initial disclosures, consisting of production  
6 of the administrative record, prior to the case management conference.

7 **8. Discovery:**

8 Discovery has not yet taken place. Plaintiff may desire discovery after he reviews the  
9 Administrative Record, which has not yet been provided to Plaintiff, on issues such as the  
10 completeness of the administrative record, conflict of interest, and funding of the plan.

11 Defendant contends that the mere existence of a structural conflict of interest (where, as here,  
12 the claim fiduciary is also the funding source for the Plan) does not in itself make discovery  
13 appropriate, particularly in light of *Glenn*'s ruling that the existence of a conflict of interest is merely  
14 one of many factors that a reviewing court will consider in determining whether denial of a claim  
15 was an abuse of discretion. If the claim decision is reasonable in light of the administrative record,  
16 courts find no abuse of discretion. See *Jordan v. Northrop Grumman Corp. Welfare Benefit Plan*,  
17 370 F.3d 869, 875 (9th Cir. 2004). The Supreme Court's decision in *Glenn, supra*, 128 S. Ct. 2343,  
18 did not substantially change the rule of *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955 (9th Cir.  
19 2006) (*en banc*), which has defined this Circuit's law on the issue. That is, unless Plaintiff is able to  
20 show that the denial of his benefits is unreasonable in light of the administrative record, discovery of  
21 information outside the administrative record would merely serve to drag out the litigation in  
22 defiance of ERISA's goal of inexpensive and expeditious dispute resolution.

23  
24 **9. Class Actions:**

25 Not applicable. This case is not a class action.  
26

1 **10. Related Cases:**

2 There are no related cases.

3 **11. Relief:**

4 **Plaintiff's Relief:**

5 Plaintiff is seeking to recover past and future disability benefits under the plan, prejudgment  
6 interest thereon, and attorney's fees. Plaintiff has estimated the benefit amounts to total to  
7 \$554,626.00, disregarding prejudgment interest on past due benefits and reduction to present value  
8 of future benefits. This is based on Plaintiff's monthly salary while working for Deloitte just before  
9 becoming disabled, and a benefit payment of 66 2/3%.

10 **Defendant's Relief:**

11 Defendant asks that Plaintiff take nothing by way of his complaint and that judgment be  
12 entered in favor of Defendant. Defendant additionally reserves the right to seek its costs of suit and  
13 attorney's fees pursuant to 29 U.S.C. § 1132.

14 **12. Settlement and ADR:**

15 Plaintiff desires court-sponsored mediation and has discussed this option with Defendant's  
16 counsel on several occasions. However, the parties have not yet reached an agreement. The parties  
17 filed a Notice Of Need For ADR Phone Conference on July 2, 2007, but the conference has not taken  
18 place. The conference is currently scheduled to take place on July 18, 2008.

19 **13. Consent to Magistrate Judge For All Purposes:**

20 Plaintiff is willing to proceed before a magistrate judge. Defendant does not consent to the  
21 assignment of this matter to a magistrate judge.

22 **14. Other References:**

23 The parties do not believe this case is suitable for other references.

24 **15. Narrowing of Issues:**

25 The parties do not believe that the issues can be narrowed at this point.



1 **16. Expedited Schedule:**

2 The parties believe this case can be handled on an expedited basis. Plaintiff asserts that this  
3 is contingent on the completeness of the Administrative Record, which has not yet been received or  
4 reviewed by Plaintiff.

5 **17. Scheduling:**

6 Plaintiff anticipates receiving the Administrative Record within a week of signing this  
7 statement. Reviewing the record will take approximately a month. If Plaintiff determines discovery  
8 is necessary, Plaintiff will require approximately two months to conduct such discovery.

9 Defendant contends that discovery is neither necessary nor appropriate in this matter, and  
10 therefore trial may be scheduled on an expedited schedule.

11 **18. Trial:**

12 If this matter is not resolved via a dispositive motion, the parties anticipate that a bench trial  
13 will last no more than two hours. Defendant asserts that the matter should be decided on the parties'  
14 briefs and the administrative record. Plaintiff contends that the documentary evidence will be  
15 primarily based on the administrative record, but that in some instances, evidence outside the  
16 administrative record is permitted. Plaintiff does not anticipate calling live witness or experts, and  
17 any testimonial evidence submitted will be in the form of declarations. It is anticipated that either  
18 Costa Nikoloutsopoulos or Laurence Padway will try the case for Plaintiff and Rebecca Hull will try  
19 the case for Defendants.

20 **19. Disclosure of Non-Party Interest Entities or Persons:**

21 Plaintiff and Defendants have filed the "Certificate of Interested Entities or Persons" as  
22 required by Civil Local Rule 3-16. Plaintiff asserts that other than the named parties, there is no  
23 other interested entity or party.

24 **20. Other Matters:**

25 No other matters need to be addressed at this time.

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3 Dated: July 15, 2008

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LAW OFFICES OF LAURENCE F. PADWAY

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/s/ Costa Nikoloutsopoulos (as authorized 7/15/08)

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Costa Nikoloutsopoulos

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Attorney for Plaintiff

BUD F. MINTON

8 Dated: July 15, 2008

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SEDGWICK, DETERT, MORAN & ARNOLD

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/s/ Rebecca A. Hull

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Rebecca A. Hull

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Cari A. Cohorn

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Attorneys for Defendant and Real Party in Interest

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28 JOINT CASE MANAGEMENT STATEMENT  
AND PROPOSED ORDER

**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this order.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Judge of the United States District Court